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The time period for reply, if any, is set in the attached communication.

RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROLF BRUCK,
WOLFGANG MAUS
and LUDWIG WIERES

Appeal 2008-0252
Application 10/014,265
Technology Center 1700

Oral Hearing Held: Wednesday, March 12, 2008

Before CHUNG K. PAK, THOMAS A. WALTZ, and
JEFFREY T. SMITH, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

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1 Commenced: 10:33 a.m.

2 MS. BEAN: Calendar 17, Appeal No. 2008-0252, Mr. Alfred
3 Dassler.

4 JUDGE PAK: Mr. Dassler, welcome. We have two patent
5 attorneys working for the Board of Patent Appeals and Interferences, who
6 will be observing this hearing, Mr. Jonathan Johnson and Mr. Jack Giblin.
7 We also have a court reporter, Mr. Kevin Carr, who's going to transcribe the
8 hearing, and the resulting transcript will become part of the record.

9 MR. DASSLER: Okay.

10 JUDGE PAK: You may start any time you wish, and you may
11 want to focus on the main issue that you raised in the brief.

12 MR. DASSLER: As we see in the examiner's answer, the
13 examiner seems to have withdrawn the 112 rejection, so I don't need to
14 cover that. What it really pertains to is the rejection over using the Machida
15 reference to show the efficiencies as recited in the Claim 1 of the instant
16 application, and that being that the catalytic converter is having a
17 honeycomb body with a total volume V smaller than the displacement H , by
18 a factor of .6, and that the catalytic converter has a geometric surface
19 dimension to provide the catalytic converter with an effectiveness E , of more
20 than 98 percent of converting at least one harmful compound.

21 JUDGE PAK: Counsel, let me ask you a question here. The
22 geometric surface you mentioned provides 98 percent effectiveness?

23 MR. DASSLER: Yes.

24 JUDGE PAK: Would this language include any surface
25 geometrically shaped, which would provide 98 percent effectiveness?

1 MR. DASSLER: Well, as long as it meets the volumetric
2 requirements for the size of the catalytic converter.

3 JUDGE PAK: Would this dimension include one you have not
4 discussed in your specification?

5 MR. DASSLER: What's that?

6 JUDGE PAK: Any shape or any dimension that is not
7 described in your specification, but achieves this 98 percent effectiveness,
8 would that be included by this claim language?

9 MR. DASSLER: I would say certainly it would be. We just
10 describe ranges, so within those ranges there's infinite possibilities for cells
11 per square inch and thickness of the foils.

12 JUDGE PAK: If this language includes something other than
13 you describe, how would one of ordinary skill in the art be led to make these
14 different dimensions?

15 MR. DASSLER: I mean to me, that seems more a 112 issue.

16 JUDGE PAK: I'm just asking.

17 MR. DASSLER: It has not been raised. I mean the
18 requirements are that the efficiency be 98 percent. You know, other than
19 that, I mean it's within the skill of somebody in the art.

20 JUDGE PAK: So you would assume, based on this percentage,
21 one of ordinary skill in the art will be able to produce appropriate
22 dimensions that could produce this effectiveness?

23 MR. DASSLER: Based on the requirements of the claim, I
24 would say it has to be that way for it to be meet the requirements of 112.

25 In the specification itself on page 10, last paragraph, we do
26 discuss the invention teaches the use of metal foils having a thickness on

1 average of approximately 25 micrometers or even 20 micrometers for
2 honeycomb bodies with more than 800 cells per square inch, and up to 1,200
3 cells per square inch. It continues on to say that with such honeycomb
4 bodies, an effectiveness of 98 percent, preferably even 99 percent is obtained
5 when the volume V of the catalytic converted connected downstream of a
6 combustion engine is only half or less of a displacement H of the engine, of
7 the combustion engine.

8 Now in the claim, we have .6 in Claim 1, .06 less than. The
9 efficiencies which the examiner used the Machida reference to establish are
10 based on Figures 10 and 11 of Machida. If I may approach the Board, I have
11 some marked up drawings to 10 and 11.

12 JUDGE PAK: You may approach the Board.

13 MR. DASSLER: As you can see from these figures, the lines
14 of the graph there show efficiencies that, as was pointed out in the brief,
15 really only approach 90 percent. In looking at the actual disclosure of what
16 is shown here also, which may have -- is of interest is that the engine
17 displacement here in these graphs is 2,000 cubic centimeters.

18 On the right-hand side you'll see that the second converter, this
19 defines the wall thickness for the second converter, these numbers on the
20 right-hand side which are directly lined off of the individual graph lines.
21 You have a range of .1 to .2 for that second converter. Well, the volume of
22 that second converter is 1,700 cubic centimeters, and then the graph also
23 includes the partition wall thickness of the first exhaust converter.

24 So you have two exhaust converters to reach the efficiencies
25 that are shown here, and the volume of that first converter is 700 CM cubed.
26 So that gives you a total of 2,400 cubic centimeters, which I have indicated

1 on the drawing for you. This is disclosed in Column 6, lines 3 through 6, for
2 the Tests 1 through 4, and Column 9, lines 61 through 64 for the Tests 5
3 through 8.

4 So going back to what the examiner says is inherent, you know,
5 we made the arguments that the inherency wasn't supported by the examiner.
6 Well furthermore here, this reference, the graphs that are being relied on
7 don't relate or do not pertain to a converter that has a volume that is less than
8 the engine displacement. In fact, it's greater than the displacement of the
9 engine.

10 JUDGE PAK: Did you argue that point in the brief?

11 MR. DASSLER: I did not argue it in the brief, but it goes to
12 the fact that, you know, this reference here doesn't show what the examiner
13 says it shows. Originally, you know, the efficiencies were seen not to reach
14 this amount. It was only after a further review of the graphs, and I find that
15 they're somewhat confusing the way they're drawn. But I happen to notice
16 this or review this yesterday, and it became apparent to me what these
17 graphs are actually showing.

18 I would be of the position that, you know, this really isn't a new
19 argument or an argument that wasn't presented. It just continues along the
20 line that the examiner's position regarding this Machida reference, showing
21 the efficiencies, is not correct.

22 JUDGE PAK: Figure 11?

23 MR. DASSLER: Yes.

24 JUDGE PAK: Does it tell you -- what thickness the prior art
25 employs?

1 MR. DASSLER: The prior art? You mean in the reference
2 itself?

3 JUDGE PAK: The reference itself employs.

4 MR. DASSLER: Well no, it doesn't.

5 JUDGE PAK: You only focus on one component, right?

6 MR. DASSLER: Yes. It's the cell density, and as you can see,
7 the cell densities are also much lower than what is, you know, shown in the
8 specification of the instant application. But as you say in Claim 1, there's no
9 requirements for cell density. But however, this is also --- Figure 11 pertains
10 to a combination of the two converters, which would have a greater volume
11 than the volume -- than the displacement of the engine.

12 JUDGE PAK: Any questions?

13 MR. DASSLER: No.

14 JUDGE PAK: We have no questions, unless you want to add
15 anything more.

16 MR. DASSLER: No. Just that the examiner's position or least
17 inherency is not met, and other than that, I thank you for your time.

18 JUDGE PAK: I thank you for coming.

19 MR. DASSLER: Thank you.

20 (Whereupon, the oral argument was concluded.)